

An exclusive report on the U.S. Environmental Protection Agency

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## ADMINISTRATIVE LAW JUDGE SIDES WITH STATE IN FIRST MAJOR TEST OF RCRA AUTHORITY

In a major victory for states, an EPA Administrative Law Judge has found that a controversial state law was not intended to restrict waste capacity and is recommending that the state's Resource Conservation & Recovery Act program not be withdrawn. The April 11 finding in support of the state of North Carolina marks the first test of a provision allowing EPA to yank RCRA program authority when states are suspected of passing laws that hinder waste capacity. EPA began the proceedings against North Carolina when it felt that a stringent state law, which had the impact of prohibiting a waste treatment facility from being built, conflicted with federal law. The RCRA withdrawal tool is one available to EPA to ensure capacity exists for waste disposal.

The multi-year debate has been plagued with charges of bias and ex parte communications by EPA administrators and has triggered a heated congressional discussion of the waste capacity issue (*Inside EPA*, Dec. 22, 1989, p10; Oct. 27, 1989, p11; May 26, 1989, p18). Environmentalists and state sources felt they

*continued on page 6*

## EPA POLLUTION PREVENTION DRAFT BILL MANDATES FIVE-YEAR PLANS TO CUT TOXICS

EPA in recent draft pollution prevention legislation is calling for industries to develop five-year plans with schedules and numerical goals to cut toxic emissions, as part of a national policy to make source reduction and recycling top priorities. Environmentalists have sharply criticized the five-year plans because they do not focus on eliminating the use of toxic chemicals, but address pollution "emissions" after they are produced, and are generally critical of the bill (*see related story*). EPA sources say the agency's final proposal will be modified to reflect recommendations made by environmentalists, congressional staff and others. While the bill will undergo changes before reaching the Office of Management & Budget this week, the March 15 draft nevertheless represents the basic approach the agency will take in its long-awaited pollution prevention legislation.

The proposal addresses both pollution prevention and a national recycling policy. It also includes data collection provisions and calls for various studies, describes a state grants program and an initiative for

*continued on page 7*

## EPA DRAFT LEAD POLLUTION PLAN CALLS FOR TOUGHER AIR EMISSIONS LAWS

An EPA workgroup has suggested that lead air emissions standards be considerably strengthened and that "high risk" uses of lead be banned, in an effort to improve the agency's program for addressing this major pollutant, according to EPA sources. The proposals and the workgroup are part of a new agency-wide lead pollution reduction plan which officials say will attempt to clean up lead problems caused by past uses of lead in paint and gasoline, reduce current lead emissions and pass new regulations to significantly cut future uses of lead and lead products (*Inside EPA*, March 30, p1). Environmentalists and agency sources say that the renewed emphasis on lead pollution results in part from recent congressional hearings faulting EPA for insufficient lead abatement activities in the face of new reports suggesting that toxic lead pollution is far more pervasive than previously believed (*Inside EPA*, March 23, p6).

The workgroup, which is being headed by the office of toxic substances, is scheduled to present its suggestions for a comprehensive lead pollution strategy to an April 27 meeting of the directors of six EPA

### INSIDE

TOXICS: international panel supports EPA non-ban strategy .....	page 2
CLEAN AIR: DOJ rejects EPA wish to appeal major stringent technology case .....	page 3
INDOOR AIR: EPA takes first major step to reduce emissions from carpets .....	page 3
CFCs: EPA detects illegal imports, fears U.S. Montreal Protocol noncompliance .....	page 5
METHANOL: study says ozone formation potential may be higher than gasoline's ....	page 6
GLOBAL WARMING: grassroots group launches push for tough local legislation ....	page 11

R. W. 4/24/90

offices that handle lead pollution. This so-called "office directors' lead committee" will then take responsibility for overseeing and implementing the lead strategy. According to agency sources and documents obtained by *Inside EPA*, the strategy will likely focus primarily on lead emissions which have already occurred and which pose the greatest health risks to humans. Regulating current and future lead emissions will also be an important part of the agency's program.

While the agency's lead pollution initiatives are still in the planning stages, sources suggest that the strategy will ultimately include:

- Banning or restricting "high risk" uses of lead, such as lead solder in drinking water pipes, discarded lead ammunition which is ingested by animals and lead in paints used by hobbyists and some industries. According to agency sources, OTS may for the first time use its authority under section 6 of the Toxic Substances Control Act (TSCA) to regulate lead as an "unreasonable risk" to human health (*see related story*).

- Tightening air quality regulations and enforcement practices. EPA enforcement of air emissions standards, particularly from lead smelters used in production and recycling of batteries, has been labelled "feeble", "failed" and "an embarrassment" by agency sources and environmentalists. While sources suggest that EPA relies on states to do much of the enforcement in this area, the agency's lead strategy is likely to include tougher standards and higher penalties for non-compliance.

- Publicizing a list of sites where significant lead pollution has already occurred. Agency sources point out that EPA "simply doesn't have the money" to successfully address lead problems in soil, but hope that publicizing specific trouble spots will encourage citizens to demand state and local funds for lead pollution abatement.

- Establishing several major research programs to determine the extent of lead contamination in soil, water and air, the long-term effects on humans of exposure to lead, and the effects that stricter regulations would have on exposure. EPA lead remediation efforts have been hampered by a lack of scientific consensus on these issues, which has led to "paralysing" debates on what regulations are necessary or useful, agency sources say.

Environmentalists say they are pleased by the direction the agency seems to be heading on lead pollution, particularly the possibility of giving new teeth to regulations which they say have largely been unenforced. One source hailed the workgroup proposals as "a major departure" from previous agency "inaction" on lead. Industry sources also support the adoption of a comprehensive lead strategy, but suggest that EPA needs to focus on emissions that have already occurred. Agency documents acknowledge that these make up "the lion's share" of lead hazards. New regulations on lead emissions, one industry source says, may be costly to implement and enforce, and would take resources away from addressing problems that already exist.

## INTERNATIONAL PANEL SUPPORTS EPA PLAN TO BACK AWAY FROM CHEMICAL BAN

An international panel addressing the control of hazardous chemicals has voted to support an EPA proposal that falls short of an outright ban which U.S. officials found too restrictive, agency sources say. U.S. officials had been pushing a wide variety of strategies for reducing risks from certain toxics, but opposed a Swedish proposal which would have implemented a sweeping chemical ban. The vote came at the March meeting of the Special Programme on the Control of Chemicals, a panel of experts that advises the Organization for Economic Cooperation and Development. OECD is an international trade organization including Western Europe, Canada, Japan, Australia and the United States. The final chemical risk reduction package is expected to come to a vote before the semi-annual full OECD meeting in Paris in early May.

The proposal adopted by the chemical control group would offer individual nations a variety of risk reduction strategies for hazardous chemicals including required safety labels, limited allowable uses, and factory safeguards against emissions, while also reserving the possibility of a ban. The Swedish proposal, presented at a programme meeting last November, would have mandated an international ban on production, use and transport of chemicals that were determined to pose major health or environmental hazards (*Inside EPA*, April 6, p6). According to Swedish government sources, the programme delegates accepted the EPA argument that bans should only be one component of a broader range of risk-reduction strategies, in order to preserve individual nations' flexibility in dealing with chemicals posing varying levels of hazards.

EPA officials note that the chemical control programme is only an advisory panel, hence their vote is not a final decision. However, Swedish and American officials said that the full OECD meeting was likely to heed the advice of the chemical control programme. Environmentalists and Swedish officials say they

EPA IG sources vehemently defend the quality of their investigations, though Johnson could not be reached for comment. Dingell staff say they are in the midst of a major probe of the IG's office, of which the North Carolina-related investigations are a part. They are not certain when the investigation will be complete.

## **SENATORS, CITING 'INADEQUATE' EPA EFFORT ON LEAD ABATEMENT, PLAN LEGISLATION**

Charging that EPA and other federal agencies are doing too little to address lead poisoning, a group of senators plans to draft legislation that will mandate that the agency take more stringent measures to abate the problem. Senate Environment & Public Works toxic substances, oversight, research & development subcommittee chair Harry Reid (D-NV) announced at a March 8 hearing that the subcommittee will prepare legislation. A Reid staffer says Reid will work with Sens. Joseph Lieberman (D-CT) and John Chafee (R-RI) to draft a bill "fairly soon."

Environmentalists, disturbed by what they see as EPA's laggard pace in regulating lead, have long been pushing for congressional action. That effort has been rejuvenated by a recent report, prepared by the Environmental Defense Fund and revealed at the hearing, which found extreme dangers from lead.

At the hearing, Lieberman said EPA has "scattered responsibility" for lead throughout the agency but "has not focused a single responsible office on lead as a unique toxic substance." Referring to EPA, the Housing and Urban Development Dept. and the Centers for Disease Control, Lieberman said the government's system to control lead poisoning is "not working." He decried the failure "to develop a coherent program for removing lead from our homes, our soil, our air and our water." Lieberman referred specifically to the problem of lead in soil, arguing that steps must be taken to "protect [children] from their yards and their playgrounds."

Reid outlined a series of options that he feels Congress and the President can adopt: 1. Rewrite the federal laws governing lead pollution; 2. change the administrative rules governing lead pollution; 3. enforce existing laws and regulations; 4. increase coordination among federal agencies responsible for regulating lead in the environment; and 5. provide more funds for cleanups and victim assistance.

A committee staffer says there is considerable concern among senators about the decentralized way EPA addresses lead. This source asserts, for example, that EPA offices have used different blood lead levels as the basis for assessing health risks. One idea among committee members, says the source, is to force EPA to assign one person to be responsible for assuring coordination of the agency's lead-related efforts.

Committee sources say no specific legislative approach has been developed, but one staffer expects that the measure will not just authorize money for emergency abatement but "will be a bigger look at what the government can do" to more vigorously address lead poisoning, particularly as it affects children.

Victor Kimm, EPA deputy assistant administrator for pesticides and toxic substances, testified at the hearing that, while there is no lead office within EPA for lead activities, "we have a variety of coordinating committees and other activities across the agency to try and bring these activities together." Kimm added that EPA would likely "formalize" the structure in the future but asserted that the agency's statute-based framework limits its ability to centralize lead poisoning efforts. He added that EPA programs are "coordinating to make sure that their actions are based on a common understanding of risks."

Kimm detailed EPA's various lead-related bans and phase-downs and said EPA is developing a "comprehensive, agency-wide strategy" to address health and environmental risks from lead, adding that a significant amount of research is still needed. Among measures he described is the agency's pollution prevention effort to evaluate whether, and if so, how, to reduce additional introduction of lead into the environment.

## **NEW PROBE COULD INDICATE MAJOR CANCER RISK FROM ELECTRICITY . . . begins page one**

Electric and magnetic fields emanate from anything carrying an electric charge. Electric fields result from the strength of the charge, while the magnetic fields result from the motion of current through a wire. Hence a television or a toaster oven has a constant electric field and a magnetic field when in operation. Major sources of human exposure to EMF include appliances, household wiring and high voltage power lines.

"We have a study underway to determine if there is a credible link" between EMF and leukemia or birth defects, says one source involved in the effort. Several sources note previous studies which have concluded that exposure to these fields may increase the risk of cancer, particularly in children. One EPA source suggests that OHEA's study may lead the agency to officially classify electromagnetic fields as a "probable human carcinogen," but EPA officials say it is unlikely that any regulations would be passed

Vol. 11 No. 13 - March 30, 1990

## In showdown over Cabinet bill

### **ADMINISTRATION THREATENS VETO OF EPA ELEVATION UNLESS KEY PROVISIONS DELETED**

In a serious confrontation with House members over a bill to elevate EPA to Cabinet status, the Bush Administration has threatened to veto the legislation if major provisions are not struck or "modified satisfactorily." The major thorn in the Administration's side relates to an independent bureau of environmental statistics to be established within the new department, which Administration officials argue could severely restrict Executive oversight of the new bureau. In a March 22 "statement of Administration policy" on H.R. 3847, introduced by chairman of the House Government Operations Committee John Conyers

*continued on page 7*

### **EPA MAY DRAFT INDOOR AIR BILL REQUIRING TESTING OF HOMES IN REAL ESTATE DEALS**

EPA is considering drafting indoor air legislation that would require homes and buildings to be tested for radon and possibly other contaminants before a real estate transaction could be completed, agency sources say. Indoor air pollution is considered a major and pervasive health threat, but one that is particularly hard to control because of limited public perception of risks and the subsequent lack of motivation to spend money for mitigation. Agency sources believe that by requiring action at the time of a home's sale, when the seller would bear the costs, the problem is more likely to be addressed.

The idea of conquering indoor air threats through the real estate market stems from a recently

*continued on page 8*

### **EPA INITIATES PROGRAM LIKELY TO RESULT IN MAJOR NEW LEAD REGULATIONS**

EPA's office of toxic substances has launched a lead pollution prevention initiative that agency sources say will likely result in strict regulations on lead mines, smelters and products. The program grows out of an agency-wide effort to limit pollution at its source, and EPA administrator William Reilly's directive for program offices to set aside 2% of their budgets toward that goal. Under that program, OTS in coordination with several other offices, has been granted \$2 million beginning in October 1990 to investigate the need for new regulations limiting lead mining, requiring recycling of lead batteries and banning lead products which have viable substitutes, agency sources say. The two-year program's ultimate

*continued on page 9*

## Dealing blow to industry

### **EPA OPTS AGAINST ALLOWING REGISTRATION OF PESTICIDE MISAPPLIED TO APPLES**

EPA in a major call this week has decided not to grant a petition -- which would have endorsed the use of a misapplied fungicide -- submitted by a company that was trying to protect a huge apple crop treated with the substance. The agency's decision deals a crushing blow to the apple industry and is expected to send a harsh signal on industry violations. The call is likely to result in the destruction of thousands of bushels of apples -- worth between \$20-million and \$30-million -- which were treated with the chemical. It could also open the door to support tough state enforcement against the company, say

## **INSIDE**

<b>SEDIMENTS:</b> EPA task force drafting options for agency control strategy .....	page 3
<b>WASTE EXPORTS:</b> U.S. decides to sign treaty, thwarting expansive EPA bill .....	page 4
<b>WETLANDS:</b> Administration cuts strong protection language from new legislation ....	page 6
<b>RISK MANAGEMENT:</b> regions assess worst environmental problems.....	page 10
<b>PESTICIDES:</b> senator to offer bill to speed removal of risky substances .....	page 10
<b>CLEAN AIR WATCH:</b> Waxman gains nonattainment deal, Senate to end debate ....	page 12

AD 4/4/90

## STATES USING EPA REPORT ON MEDICAL WASTE INCINERATION IN DEVELOPING REGS

EPA will soon release a report on medical waste incineration that is being used by states to develop regulations for existing incinerators in the absence of federal rules, according to agency sources. The sources point out that the study will play an important role in defining control technologies and emission levels for medical waste incinerators, an important segment of the nation's waste stream that is not covered by EPA's recently proposed new source performance standards for municipal waste combustors.

"States are taking the initiative to control possible threats to public health from on-site hospital and institutional incinerators," says an EPA source, adding that the agency's report "offers possible affordable solutions to current problems." The report, *State of the art assessment of medical waste thermal treatment*, is likely to be the pivotal guidance for state regulations because federal regulations are not forthcoming, says another agency source. Already, California is using the report, obtained by *Inside EPA*, to assess the best technology for medical waste incinerators, says a state source. This source says that California had asked for the report to be done "to help us determine the best available control technology (BACT)" and notes that now other states "are turning to us for help." EPA's "risk reduction engineering laboratory" and California's Air Resources Board jointly sponsored the report.

Medical waste incinerators may emit high levels of some toxic compounds, including dioxins, toxic metals and acid gases, the report notes. "Medical waste incinerators present unique challenges due to their size and the heterogeneity of the waste," the report says. The report surveys existing information on medical waste treatment and assesses "the state-of-the-art" incineration technology.

EPA currently is working on a new source performance standard for new medical waste incinerators, but that is unlikely to affect existing burners, says an agency source. The source believes that state regulations will "supersede what the federal government does" and "might even raise questions of why we need federal standards" for existing incinerators. The agency's NSPS effort is still in the data gathering stage; EPA is setting up a program to test emissions from medical waste burners since there is so little data on emissions at present, says one agency source. The NSPS is not expected to be proposed until the Spring of 1992 at the earliest, says one agency source.

## EPA PROGRAM COULD LEAD TO MAJOR LEAD REGULATIONS . . . begins page one

objective, according to agency sources, is "to eliminate or reduce further additions of lead to the environment."

An OTS memorandum outlining the program, obtained by *Inside EPA*, notes that lead poses "serious health risks" and is "extremely expensive" to control or clean up once it has been released into the environment. OTS concludes that lead is best controlled through pollution prevention: by "sharply" reducing the amount produced and introduced into the waste stream. This could best be done through regulations and economic incentives on producers and recyclers of lead and lead products, the plan suggests. Members of the Senate Environment and Public Works Committee are reportedly planning to introduce legislation directing EPA to take stringent lead abatement measures (*Inside EPA*, March 23, 1990, p1).

EPA will likely eventually require lead battery recycling under the Toxic Substances Control Act, agency and industry sources predict. Section 6 of TSCA allows EPA to regulate substances that present an "unreasonable risk," and the lead program's prospectus maintains that "lead is one of the nation's most toxic" pollutants. A primary goal of the project is to determine what regulations TSCA authorizes EPA to employ, sources say.

The most likely step, sources suggest, will be implementation of mandatory recycling of lead batteries, though EPA sources would not suggest how such a rule would be monitored or enforced. OTS claims that batteries are responsible for "65% of all lead" in municipal waste streams. Industry sources dispute this figure, but fear nevertheless that there will be new regulations which will be costly and difficult to enforce. One industry source notes that manufacturers can do little to require consumers to dispose of batteries properly.

The second major target of regulation is likely to be "secondary smelters," sources say, which are used in recycling batteries. OTS notes that smelters are a major source of lead emissions into the environment, and one environmentalist contends that "all secondary smelters have problems" complying with air quality regulations. Industry sources are concerned that they will be required to implement costly new technologies to limit hazardous emissions from smelters, and EPA sources note that some form of "economic incentives" may be necessary, though they would not be more specific. Agency sources are careful to note that the OTS project will involve several other offices in an extensive research effort to determine risks and

potential regulations before any final rules are proposed.

The OTS lead pollution prevention program was selected for funding by the Office of Policy, Planning and Evaluation's pollution prevention office as part of the administrator's "2% set-aside program." Under this program, EPA offices set aside 2% of their budgets to create an \$11-million fund designed to encourage pollution prevention activities by having contributing offices propose projects to compete for the money (Inside EPA, March 23, 1990, p1).

## **EPA REGIONS TO RANK ENVIRONMENTAL THREATS FOR AGENCYWIDE PRIORITY PLANNING**

EPA's regional offices are undertaking major new projects to determine which environmental problems pose the greatest threat to human health and the environment, sending a clear signal the agency intends to make "risk" the centerpiece of its policy making. The role of risk in EPA's budget-setting process was discussed by Sen. Barbara Mikulski (D-MD), chairman of the Senate Appropriations HUD-independent agencies subcommittee, in March 8 hearings. Mikulski stressed that budget decisions should be based on risk, putting funds where the greatest problems reside. Agency sources note that the regional "comparative risk" projects will contribute significantly toward such decisionmaking.

The new regional projects mirror a 1987 analysis conducted by EPA managers that found EPA's priorities are set more by congressional mandates and public perception of problems than by the real risks from pollution. Regions I, III and X completed projects last year that reiterated the 1987 findings that indoor air, pesticides and drinking water contamination receive less attention despite the fact they pose higher risks than Superfund sites and other problems (Inside EPA, Dec. 15, 1989, p3). Headquarters has now asked the seven other regions to conduct similar projects. Some states are also being funded by EPA to conduct assessments of their priority problems. The regional and state findings will give EPA a clear sense of how far the agency's efforts diverge from the real problems and are likely to generate a "public dialogue" that will eventually lead to a shift in priorities, say agency sources. In addition, the regional offices will be more fully brought into EPA's annual planning and budget process and will have an opportunity to influence agency priorities once their projects are complete, the sources say.

Risk comparison is "the organizing logic" for EPA's strategic planning process, a major management initiative of EPA administrator William Reilly's aimed at ensuring that the agency knows what the greatest threats are to health and the environment. Regional priorities are not expected to match national priorities, sources note. Reilly has also asked EPA's Science Advisory Board to rank environmental risks and recommend strategies for reducing them (Inside EPA, April 28, 1989, p1); that project is expected to play an important role in reshaping agency priorities. Using the comparative risk approach in strategic planning, EPA asks whether it is addressing a problem that has been identified or not; if not, EPA asks whether it is capable of tackling the problem, whether it has technology, legislative authority, and other elements necessary to address a problem. EPA wants to know "what risk reduction we can get if we throw money at a problem," explains one source. The seven new regional projects are expected to be completed by this fall.

The philosophy is to use risk to set priorities instead of focusing on the number of permits issued or enforcement actions taken each year, explains a regional source. This source adds that headquarters is trying to involve the regions more in the agency planning and budgetary processes. States have also begun working closely with regions to rank their risks. Washington, Colorado, Louisiana, and Vermont have been funded by EPA to conduct their own projects. Washington and Colorado completed studies in 1989.

## **SEN. LIEBERMAN TO OFFER FIFRA BILL EXPEDITING REMOVAL OF RISKY PESTICIDES**

Senate Environment & Public Works Committee member Joseph Lieberman (D-CT) will soon introduce legislation to strengthen the nation's pesticide law by expediting the removal of harmful products from the market, Senate staff say. Lieberman has taken a keen interest in pesticides since last year's "apple scare," which resulted when the chemical preservative Alar was targeted as a human carcinogen. Alar was subsequently withdrawn from the market. The Administration has since offered its own food safety plan, but Lieberman and other members of Congress have criticized it for not being protective enough (Inside EPA, Nov. 3, 1989, p1).

Lieberman announced that he would introduce legislation amending the Federal Insecticide, Fungicide & Rodenticide Act in a recent Senate floor statement, calling for "sweeping changes in the way our government controls chemicals on the food we eat." Staffers say he plans to introduce his bill next month.

Lieberman's bill will require periodic expiration of pesticide registrations so that "bureaucratic delay does not prevent the removal of harmful substances from the food supply." Environmentalists have often criticized EPA review of pesticides for taking an inordinate amount of time, allowing older, unsafe